

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DARREN LUBBE,

Plaintiff,

v.

MARK MILANOVICH, et al.,

Defendants.

§
§
§
§
§
§
§
§

1:18-CV-1011-RP

ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Mark Lane concerning the motion to dismiss filed by Defendants Christopher Mulch, Brandon Negri, Christopher Block, Jeoff Williams, Thomas Ruocco, and Mark Milanovich (together, “Defendants”), (Dkt. 32). (R.&R., Dkt. 40). In his report and recommendation, Judge Lane recommends that the Court (1) grant the motion and dismiss with prejudice Lubbe’s First Amendment free exercise claim and stigma plus infringement due process claim because Defendants are entitled to qualified immunity on those claims and (2) deny the motion as to Lubbe’s First Amendment right to petition claim, substantive due process claim based on his alleged constructive discharge from DPS, and equal protection claim. (*Id.* at 19). Lubbe timely filed objections to the portion of the report and recommendation that recommends this Court dismiss Lubbe’s stigma-plus infringement claim, (Objs., Dkt. 41).

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Lubbe timely objected to the portion of the report and recommendation regarding Lubbe’s stigma-plus infringement claim, the Court reviews that portion of the report and

recommendation *de novo*. Having done so, the Court overrules Lubbe's objections and adopts that portion of the report and recommendation as its own order. The portions that the parties did not object to were reviewed for clear error. Having done so, the Court finds no clear error and adopts those portions of the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (R. & R., Dkt. 40), is **ADOPTED**.

IT IS ORDERED that Defendants' motion to dismiss, (Dkt. 32), is **GRANTED IN PART** and **DENIED IN PART** in accordance with this Order and the report and recommendation it adopts.

The Court **DISMISSES WITH PREJUDICE** Lubbe's First Amendment free exercise claim and stigma plus infringement due process claim.

For clarity, the Court **ORDERS** Lubbe to file an amended complaint that omits those claims on or before **September 17, 2020**. No other substantive changes are allowed.

SIGNED on September 3, 2020.

A handwritten signature in blue ink, appearing to read 'Rob Pitman', is written over a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE